IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

APPEAL NO.383 OF 2000

IN

NOTICE OF MOTION NO.451 OF 1987

IN

SUIT NO.1678 OF 1987

AND

APPEAL NO.384 OF 2000

IN

NOTICE OF MOTION NO.452 OF 1995

IN

SUIT NO.1680 OF 1997

...

Sundeep Jugalkishore Gupta ...Appellant
(orig.Plaintiff)

v/s.

Vijaykumar Purshottam Kabali HUF
and ors. ...Respondents
(orig.Defendants Nos.1-4)

And

Lalit Gandhi & ors. ...Respondents

Nos.5 to 10.

...

Mr.Virag Tulzapurkar with Mr.Sandip Bhimekar i/b Wadia Gandhy & Co. for the Appellant.

Mr.F.Devitre with Mr.Rajesh Shah i/b Soloman & co. for Respondents Nos. 1 to 4.

Mr.V.C.Kotwal i/b Ms.J.P.Vas for Respondent No.5.

...

CORAM: D.K.DESHMUKH &
J.H.BHATIA, JJ.
DATED: 31ST JULY, 2007

P.C.:

1. It is common ground that the parties to both these appeals are the same, the points that arise for consideration are also same, therefore, both these appeals can be conveniently disposed of by a common order.

2. By these appeals, the Appellants challenge the order dated 27-1-2000 passed in Notice of Motion

No.451 of 1987 taken out in Suit No.1678 of 1987 and order passed in Notice of Motion No.452 of 1987 taken out in suit No.1680 of 1987. Both the notices of motion were taken out by the Plaintiff in these two suits. The grievance made in both the notices of motion was that the Defendants Nos. 1 & 2, in the suit, in disobedience of the order passed by the learned single Judge of this court dated 8/9-11-1989 entered into an agreement with the persons who were joined as Respondents to the Notices of Motion. According to the Plaintiff, the act of the Defendants Nos. 1 & 2 of entering into agreement to transfer the properties to the Respondents was in deliberate breach of the order passed by the learned single Judge as also the order passed by the Appeal court dated 5-2-1993. By those Notices of motion, the Plaintiff was praying for appointment of receiver on the property. He was also praying for an order restraining the Defendants and the Respondents from in any manner acting in furtherance of the agreement dated 28-10-1994.

3. The learned single Judge by order dated 27-1-2000 held that the agreement entered into between the Defendants Nos. 1 & 2 and the Respondents is

contrary to the interim order passed by the learned single Judge as also the order passed by the Division Bench in Appeal. Because both the Defendants and the Respondents tendered unconditionally apology, action against them for having committed willfully breach of the order was not taken. But the court confirmed the order by which the Receiver was appointed on the property. The court also restrained the Defendants and the Respondents from in any manner acting upon in furtherance of the agreement dated 28-10-1994. In other words, the learned single Judge granted relief in terms of prayer clause (c) of the motions in part. The only part of prayer (c) of the motions that stood rejected by the order was the part by which the Plaintiff was seeking a direction to the Defendants and the Respondents to cancel the articles of agreement dated 28-10-1994.

4. By these Appeals, only that part of the order of the learned single Judge by which the learned single Judge does not grant last part of the prayer clause (c) of the motions is challenged. What is pertinent to be noted is that the learned single Judge has also not given any reason for not making the order directing cancellation of the articles of agreement.

The learned Counsel appearing for the Appellant, relying on the judgment of the Supreme Court in the case of Surjit Singh v/s. Harbans Singh and ors, AIR 1996 SC 135, and the judgment of the Division Bench of this court in the case of Kesharimal Jivji Shah v/s. Bank of Maharashtra, 2004(3) Mh.L.J. 893, submits that action taken or agreement entered into in breach of the court's order is invalid and void and therefore, according to the learned counsel, the learned single Judge should have directed the Defendants Nos. 1 & 2 and the Respondents to cancel the agreement which admittedly has been entered into by them in breach of the interim order made by the court. The learned Counsel further submits that despite there being a clear order made by the court, the Defendants Nos. 1 & 2 and the Respondents have entered into a further agreement with the Housing Development & Infrastructure Ltd. transferring their rights in favour of that company. According to the learned Counsel, the Plaintiff came to know of this development because of the prospectus published by that company on 18-6-2007. According to the learned Counsel, that prospectus shows that the Defendants Nos. 1 & 2 and the Respondents have entered into a transaction in relation to the same property with

that company on 9-2-2005. The learned Counsel, therefore, submits that in any case because of the subsequent conduct of the Defendants Nos. 1 & 2 and the Respondents, an order directing them to cancel the agreement has to be made.

5. On the other hand, the learned Counsel appearing for the Defendants Nos. 1 & 2 submits that there is already an order made restraining the Defendants Nos. 1 & 2 from acting on the agreement dated 28-10-1994. Therefore, a further direction for cancellation of the agreement dated 28-10-1994 is not necessary. It is also submitted that by entering into the transaction with the aforesaid company, the Defendants Nos. 1 & 2 have not acted in furtherance of the agreement dated 28-10-1994. The transaction between the Defendants Nos. 1 & 2 and the above referred company is that the Defendants have assigned their rights to contest the suit in favour of the company, a power of attorney has also been given to that company. In the submission of the learned counsel, this does not amount to committing breach of the order of the court.

6. It is clear from the order impugned in the Appeal

that before the learned single Judge both the Defendants Nos. 1 & 2 and the Respondents agreed that they have entered into agreement dated 28-10-1994 with full knowledge of the interim order passed by the court and that agreement entered into is in clear breach of the order passed by the court. If a transaction is entered into in breach of an order made by the court, then that transaction does not exist in the eyes of law. That transaction is treated as void. The Supreme Court has considered this aspect of the matter in its judgment in the case of Surjit Singh, referred to above. The Division Bench of this court in its judgment in the case of Keshrimal Jivji Shah has considered the judgment of the Supreme Court in the case of Surjit (supra) and other judgments and has clearly held that a transaction entered into in breach of interim order made by the court is invalid and void. Therefore, in our opinion, in view of the admitted position that the agreement dated 28-10-1994 was entered into in breach of the court's order, the agreement was invalid. Really speaking when the Defendants Nos. 1 & 2 and the Respondents tendered their unconditional and unqualified apology, it was for them to voluntarily tell the court that they are also

cancelling the agreement which they had entered into in breach of the court's order. So far as subsequent conduct of the Defendants Nos. 1 & 2 and the Respondents is concerned, it is apparent that because of that transaction now interest of the third party is involved and because the company has published the prospectus it is possible that interest of other third parties may also be involved. The very purpose of making an interim order was to prevent creation of third party interests in the property. If the agreement is permitted to remain in force, the very purpose for which the interim order was made by the court may be defeated. In our opinion, therefore, as the agreement dated 28-10-1994 is clearly in breach of the interim order made by the court, a direction has to be issued to Defendants Nos. 1 & 2 and the Respondents to cancel that agreement. Accordingly, the Appeal is allowed. Notice of Motion No.451 of 1987 and Notice of Motion No.452 of 1987 taken out by the Plaintiff stand granted in terms of prayer clause (c) of those motions. Eight weeks time is fixed for the Respondents and the Defendants Nos. 1 & 2 to cancel the Articles of Agreement dated 28-10-1994 and to intimate the fact to the court and to the Plaintiff.

Both Appeals disposed of.

(D.K.DESHMUKH, J.)

(J.H.BHATIA, J.)

upk/-